

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2019-298-E - ORDER NO. 2019-\_\_

October \_\_, 2019

IN RE:	)	
	)	ORDER GRANTING
Application of Duke Energy Progress,	)	AUTHORITY TO ISSUE AND
LLC for Approval to Issue and Sell	)	SELL SECURITIES
Securities	)	
_____	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on an Application from Duke Energy Progress, LLC (the “Company”) for an order approving the Company’s request for prior approval to issue and sell a maximum of \$3,500,000,000 aggregate principal amount of securities in the manner described in the application (“Application”). The Company’s Application was filed on September 10, 2019.

The Company also served its Application on the South Carolina Office of Regulatory Staff (“ORS”). ORS informed this Commission by correspondence dated October 3, 2019, that it had no objection to the request. The Application was approved by the Commission at its meeting on October 9, 2019. This Order explains the basis of the approval.

Based on the verified Application, exhibits and the Commission’s entire files, the Commission states as follows:

**FINDINGS OF FACT**

1. The Company is a limited liability company duly organized and existing under the laws of the State of North Carolina, domesticated under the laws of the State of South Carolina to conduct business within this state. It is engaged in the business of generating, transmitting,

distributing and selling electric power and energy, and is a public utility subject to the jurisdiction of this Commission and the North Carolina Utilities Commission. It is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. The Company is a wholly owned subsidiary of Duke Energy Corporation (“Duke Energy”), which is a holding company headquartered in Charlotte, North Carolina. Duke Energy Corporation wholly owns six other regulated, public utility subsidiaries, Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, Duke Energy Indiana, LLC, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Piedmont Natural Gas Company, Inc. In addition, Duke Energy owns various nonregulated energy businesses primarily located in the U.S.

2. The Company’s existing outstanding long-term debt principally consists of First and Refunding Mortgage Bonds, Senior Debt, Tax Exempt Bond Obligations, Finance Leases, Accounts Receivable Securitizations, and Other Long-Term Debt. A schedule of all such Bonds, Senior Debt, Tax Exempt Bond Obligations, Finance Leases, Accounts Receivable Securitizations, and Other Long-Term Debt outstanding as of March 31, 2019 is attached to its Application as Exhibit A. All of the outstanding First Mortgage Bonds were issued under the terms of a Mortgage and Deed of Trust, dated as of May 1, 1940, as amended from time to time, between the Company, The Bank of New York Mellon (formerly Irving Trust Company) and Tina D. Gonzalez (successor to Frederick G. Herbst), as Trustees (hereafter sometimes referred to as the “Mortgage”). The Accounts Receivable Securitization consists of debt of the Company’s subsidiary, Duke Energy Progress Receivables, LLC. The Finance Leases consist of certain pipeline and building leases. The Tax Exempt Bond Obligations resulted when the Company borrowed the proceeds of the sale of tax exempt pollution control or solid waste disposal revenue bonds issued by various governmental authorities pursuant to authorization granted by this Commission. The Other Long-

Term Debt includes a financing arrangement utilizing commercial paper backed by the long-term credit facility described in Section 4(ii) below and certain borrowings under the Money Pool Agreement between Duke Energy Progress and certain affiliates of Duke Energy Corporation.

3. The Company proposes, pursuant to its Application in this Docket, to issue, sell, incur or undertake from time to time a maximum of \$3,500,000,000 aggregate principal amount of all or any combination of Proposed Debt Securities, Long-Term Bank Borrowings, Tax Exempt Bond Obligations, and Finance Lease Obligations. The Company also proposes to enter into Interest Rate Management Agreements. All of such financial transactions are further defined or described below (and are collectively referred to as, the “Proposed Securities”):

i. Long-Term Debt Securities (“Proposed Debt Securities”)

The Proposed Debt Securities may be unsecured debt instruments or First and Refunding Mortgage Bonds.

To the extent the Proposed Debt Securities are Senior Notes, they will be created and issued under the Senior Indenture as heretofore supplemented or as further supplemented by a Supplemental Indenture to be executed in connection with their issuance.

To the extent the Proposed Debt Securities are unsecured senior notes, they will be created and issued under, and subject to the provisions of the Indenture (for Senior Notes), dated as of March 1, 1999 between the Company and The Bank of New York Mellon, as Trustee, as amended and supplemented, which is substantially in the form attached hereto as Exhibit B, as further supplemented by the Supplemental Senior Note Indentures, to be executed in connection with their issuance.

To the extent the Proposed Debt Securities are the Company’s First and Refunding Mortgage Bonds, they will be created and issued under the Mortgage, as heretofore supplemented

and as to be further supplemented and amended by a Supplemental Indenture to be executed in connection with their issuance. They will be subject to all of the provisions of the Mortgage, as supplemented, and by virtue of said Mortgage will constitute (together with the Company's outstanding First and Refunding Mortgage Bonds) a first lien on substantially all of the Company's fixed property and franchises.

When any of the Proposed Debt Securities are issued for refunding or refinancings, the Company proposes to execute the proposed transactions so that, over time, there will be no material effect on the Company's capitalization with respect to the source of funds.

The Proposed Debt Securities may also consist of debt securities subject to remarketing prior to maturity. Consistent with prior orders of the Commission, any remarketing of such securities or resetting of their interest rates prior to the scheduled maturity date would not be deemed to be a re-issuance of such securities by the Company, so as to reduce the amount of securities otherwise permitted to be issued by the Company pursuant to the terms of the Commission's order in this docket.

ii. Long-Term Bank Borrowing

The Company further seeks permission to make long-term borrowings under its Master Credit Facility ("Long-Term Bank Borrowings") or other similar bank borrowing arrangements. As of July 31, 2019, the Company had a \$1.25 billion borrowing sublimit under Duke Energy's \$8.0 billion master credit facility with a group of banks. Duke Energy Progress may increase its borrowing sublimit under the master credit facility to a maximum of \$1.4 billion, as may be necessary to improve its liquidity and financial flexibility. Borrowings under the facility are available for general corporate purposes. The current five-year facility will expire on March 16, 2024. Under the agreement, any borrowing of more than one year in duration by the Company (or

any other borrower other than Duke Energy Corporation) must be specified as a long-term borrowing in the notice of borrowing to the lenders. The Company therefore requests the Commission's approval for borrowings in excess of one year in duration, under the Master Credit Facility or such other similar bank borrowing arrangements the Company may enter into from time to time.

iii. Tax Exempt Bond Obligations

The Company proposes to enter into agreements to borrow proceeds from the sale of tax exempt debt securities issued by one or more governmental authorities ("Tax Exempt Bonds"), to fund construction of qualifying facilities associated with the Company's electric generation plants (and qualifying related expenditures), to reimburse costs previously expended for such purposes, or to refund previously outstanding Tax Exempt Bonds. The Company's obligation to repay the issuing authority may be direct, through a secured or unsecured loan agreement between it and the authority, or indirect through financing arrangements such as a letter of credit posted by a bank to secure the Company's obligations on the Tax Exempt Bonds. The Company's direct obligation under a loan agreement with the authority may be insured by a third party or secured by issuance of a First and Refunding Mortgage Bond or other secured instrument.

iv. Finance Lease Obligations

The Company proposes to enter into finance lease obligations ("Leases"), under which it will utilize lease financing structures as another form of financing the capital requirements discussed in Section 9 of this Application. The Leases will have structures and terms similar to other forms of debt financing, but with the potential, in certain instances, to lower the overall cost of financing property acquisitions.

Leases may be used to finance the construction or acquisition of new property, including in connection with construction of new electric plant, or refinancing of existing utility property, in order to optimize the cost of financing commensurate with such property's expected life. The property expected to be leased will consist of (a) electric generating facilities, and equipment used in the Company's operations including, but not limited to, meters, landfill and coal yard heavy equipment, transportation equipment, turbines, transformers, water pumps, exhaust stacks, substations, computers and office equipment, and intangible property such as software and site licenses, and (b) real property, office buildings and other such property used in the Company's operations (collectively, the "Property").

The amount financed under each Lease, excluding transaction costs, is not expected to be more than the net capitalized cost of the Property or the appraised value of the Property (in the event more than the capitalized cost is financed).

In accordance with generally accepted accounting principles, the net capitalized cost of property usually includes installation, training, allowance for funds, administrative overhead and other costs capitalized in connection with acquiring and placing the property in service. Such costs are expected to be included in the Property cost financed under each Lease.

To effectuate Lease transactions, the Company may obtain third-party lease financing for the original purchase or refinancing of Property acquisitions, and an agreement may be executed with a financing counterparty (the "Lessor") setting forth the terms of each Lease.

As part of the consummation of a Lease transaction, the Lessor may typically either (1) pay the vendor and the Company for their respective costs associated with the Property acquisition or (2) reimburse the Company for the capitalized cost of the Property, with the Company concurrently paying the vendor the invoice cost.

The Company may enter into one or more participation agreements with its affiliates and the Lessor in connection with the Leases, with such agreements defining the Company's role as principal and, as applicable, agent on behalf of its affiliates for billing and payment remittance purposes. Such arrangements may be undertaken solely for administrative efficiencies and the convenience of the parties involved and will be subject to applicable standards relating to transactions among affiliates.

At the end of each initial or renewal lease term, it is anticipated that the Company will have an option to either (a) renew each Lease pursuant to arm's-length negotiation with the Lessor or other potential lessors, (b) purchase the Property, or (c) terminate the Lease.

v. Interest Rate Management Agreements

As described in its previous Application dated December 1, 2016, in Docket No. 2016-398-E, the Company utilizes various techniques to manage the interest costs it incurs in connection with its financial obligations. Although it is unclear whether or not such activities constitute the issuance of securities within the meaning of S.C. Code Ann. § 58-27-1720, the Company nevertheless respectfully requests that the Commission grant it authority to utilize interest rate management techniques and enter into Interest Rate Management Agreements to manage its interest costs. Having explicit Commission authority for such agreements will allow the Company to be able to defer the mark-to-market impact of Interest Rate Management Agreements under Statement of Financial Accounting Standards 71. Such authority will allow the Company sufficient alternatives and flexibility in effectively managing interest rate risk.

Interest Rate Management Agreements will include products commonly used in today's capital markets. These products include, but are not limited to, interest rate swaps, caps, collars, floors, options, or other hedging products such as forwards or futures. The Company expects to

enter into these agreements with counterparties that are highly rated financial institutions. The transactions will be for a fixed period and a stated notional amount and may be entered into in connection with underlying fixed or variable obligations of the Company.

The Company will establish pricing for Interest Rate Management Agreements through negotiated offerings, through a competitive bidding process, or otherwise in accordance with recognized market practices.

The notional amount of any given Interest Rate Management Agreement will correspond to all or a portion of a current or future debt security authorized by statute or Commission order. Therefore, entry into a given Interest Rate Management Agreement itself will not reduce the amount of “shelf” authority under a Commission order governing such a debt security.

4. Method of Issuance and Sale. To the extent the Proposed Securities are issued and sold in one or more public offerings subject to registration under the federal securities laws, the Company will sell the Proposed Securities during the effective period of a “shelf” registration statement which the Company has filed with the Securities and Exchange Commission in connection with the registration of such securities. The Company proposes to enter into negotiations with, or request competitive proposals from, investment banks or other financial institutions to act as agents, dealers, underwriters, or direct purchasers in connection with either the public or private offering of each issuance of Proposed Securities in accordance with the terms thereof. The Company will determine which sales method and financial institution(s) will provide the most favorable terms to the Company for any issuance and sale of the Proposed Securities. Certain types of the Proposed Securities, such as bank borrowings, leases and interest rate management agreements, are not typically “sold” in a public or private offering. The method of



issuance of such securities, or incurrence of obligations, will be as described in the corresponding part of Section 3.

5. Previously Granted Authority. We find that the authority requested in the Application is to replenish the authority previously granted under the Commission's Order No. 2017-63 issued February 10, 2017 in Docket No. 2016-398-E, of which \$3,074,863,277 has been utilized and \$425,136,723 remains. We find that the remaining authority granted in such docket be terminated, and subsumed within the authority granted under this Order.

6. Fees and Costs. We find that the Company will pay no fee for services (other than attorneys, accountants, trustees, rating agencies and fees for similar technical services) in connection with the negotiation and consummation of the issuance and sale of any of the Proposed Securities, nor for services in securing underwriters, agents, dealers or purchasers of such securities (other than fees negotiated with such persons).

7. Use of Proceeds. We find that the Proceeds from issuance of the Proposed Securities may be used for (a) the purchase or redemption of the Company's outstanding higher cost securities as hereinafter provided, (b) refunding maturing securities, (c) financing the Company's ongoing construction, as further described in Section 9 hereof or (d) the Company's general purposes, as allowed. In each case, such proceeds may be used for the repayment of short-term debt incurred for such purposes.

When the net proceeds from the issuance of any of the Proposed Securities will be applied and used by the Company to purchase or redeem certain of the Company's outstanding unmatured debt securities, such issuances will be made from time to time when market conditions permit, on terms which would result in a lower cost of money to the Company. Any premium paid on purchased or redeemed debt securities will be amortized over the life of the new securities, and

the Company proposes to include the after-tax amount of such unamortized premium in Company's rate base as a component of working capital. As previously noted, the net proceeds of any of the Proposed Securities may be applied and used by the Company to refund maturing securities, including the repayment of short-term debt incurred for that purpose. A schedule of the maturities of the Company's outstanding debt securities is provided in Exhibit A to the Application.

8. Electric Plant and Demand Growth. The Company is continuing its construction program of additions to its electric generation, transmission and distribution facilities in order to, among other things, (i) meet the long-term expected increase in demand for electric service, (ii) construct and maintain an adequate margin of reserve generating capacity, and (iii) conduct necessary replacements of major generating plants and plant components, and is funding coal ash basis closure costs.

The Company connected approximately 23,515 new customers in 2018 and continues to incur significant capital expenditures related to expanding and replacing its transmission and distribution system.

The Company's electric energy sales were approximately 43.3 million and 44.8 million megawatt hours for 2017 and 2018, respectively. Sufficient financing of its current construction program is essential if the Company is to continue to be able to meet its obligations to the public to provide adequate and reliable electric service. The Company's electric plant construction expenditures were \$1.7 billion and \$2.2 billion for each of 2017 and 2018, respectively. Further information is set forth in the Company's financial statements attached as exhibits to the Application.

The Company's plans include incurring significant capital expenditures for maintenance of its existing generation plants, construction of new electric generation plants, modernization of the electric grid, and coal ash basin closure costs. During the period 2019 through 2023, the Company plans to invest approximately \$9.6 billion in its electric plant, including grid modernization and coal ash basin closure costs. Adequate financing authority as applied for herein will allow the Company to access the capital markets to efficiently fund these necessary capital expenditures.

9. Purposes and Compatibility with Public Interest. We find that the purposes of the issuance, sale, and/or incurrence of the Proposed Securities are lawful objects within the limits of the Company's authority and purposes under the applicable laws and regulations, and as set forth in its Limited Liability Company Operating Agreement, as amended, which is on file with this Commission. We find that the issuance and sale of the Proposed Securities will be compatible with the public interest, will be necessary and appropriate for, and consistent with, the proper performance by the Company of its service to the public as a utility, will not impair its ability to perform that service, and will be reasonably necessary and appropriate for such purpose.

10. Financial Condition and Operating Reports. We find that the financial condition of the Company and its results of operations are shown by the Company's Annual Reports to the Commission and by other records of the Commission relating to the Company

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and review and study of the verified Application, the Commission is of the opinion, and so finds, that the Company is a public utility subject to the jurisdiction of this Commission with respect to its rates, service, and securities issues

and makes the following conclusions in regard to the issuance and sale of the Proposed Securities, as set forth in the Company's Application.

1. The Commission concludes that the relief sought by Duke Energy Progress is consistent with its previous orders.

2. The Commission concludes that the grounds stated in Duke Energy Progress' Application are sufficient to support the relief sought by the Company.

3. The Commission concludes that the purposes of the issuance and sale of the Proposed Securities are lawful objects within the corporate purposes of the Company and compatible with the public interest.

4. The Commission concludes that the issuance and sale of the Proposed Securities will be necessary and appropriate for or consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service and is reasonably necessary and appropriate for such purposes.

5. When the net proceeds from the sales of securities herein authorized are applied and used by the Company to purchase or redeem certain of the Company's outstanding unmatured debt securities, such sales will be made from time to time when market conditions will permit the sales on terms which would result in a lower cost of money to the Company. We conclude that, consistent with Order No. 2017-63 in Docket No. 2016-398-E, any premium paid on purchased or redeemed debt securities will be amortized over the life of the new securities and the Company will include in its rate base as a component of working capital the after-tax amount of any such unamortized premium. If any of the securities are sold through a noncompetitive methodology such as in a private placement or at a negotiated price, the Company will on the day of pricing or

the next business day notify the Commission in writing of the terms and basis of the pricing including comparative current market data of other similar financing transactions.

6. ORS does not oppose the relief sought in the Company's Application.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT:

A. ORS was properly served with the Application in this Docket and does not oppose the relief sought by the Company.

B. Duke Energy Progress, LLC is hereby, authorized, empowered, and permitted, upon the terms and conditions set forth in its Application to issue and sell from time to time a maximum of \$3,500,000,000 aggregate principal amount of the Proposed Securities as described in the Application; and

C. To use the net proceeds of such sales to purchase or redeem higher cost securities, to refund maturing securities, to finance its ongoing construction, and for its general purposes.

D. The terms and conditions proposed for the issuance and sale of securities are reasonable and permitted by law in the manner set forth in the Company's Application.

E. The purposes of the issuance and sale of the Proposed Securities are lawful objects within the limits of the Company's authority and purposes under the applicable laws and regulations.

F. The issuance and sale of the Proposed Securities will be necessary and appropriate for, and consistent with, the proper performance by the Company of its service to the public as a utility, will not impair its ability to perform that service, and will be reasonably necessary and appropriate for such purpose.

G. That approval of the Application does not bind the Commission as to the ratemaking treatment of this issuance.

H. That this Order shall not, in any way, affect or limit the right, duty, or jurisdiction of the Commission to further investigate and order revisions, modifications, or changes with respect to any provision of this Order in accordance with the law.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

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Comer H. Randall, Chairman

ATTEST:

\_\_\_\_\_  
Justin T. Williams, Vice Chairman